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Clerk of the Napa Superior Court
By: Maricela Bahena, Deputy

*Plaintiffs Jeff Warren, Hillary Cole,
and Katherine Varela, individually,
and on behalf of the general public,
and Plaintiffs John Trant, David
Gunkle, and Victoria Stewart,
individually.*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

JEFF WARREN, HILLARY COLE, and
KATHERINE VARELA, individually
and on behalf of the general public, and
JOHN TRANT, DAVID GUNKLE, and
VICTORIA STEWART, individually,

Plaintiff,

vs.

APPELLATIONS, LP dba ITALICS
WINEGROWERS, and DOES 1
through 10 inclusive,

Defendants.

CASE NO.: 21CV001018

UNLIMITED CIVIL CASE

**FIRST AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION, &
INJUNCTIVE RELIEF**

- (1) Failure to Provide Reimbursement of Business Expenses in Violation of Lab. Code § 2802 & IWC Wage Ord. No. 5-2001;**
- (2) Failure to Pay Overtime in Violation of Lab. Code §§ 510, 558, 1194, 1198, *et seq.* & IWC Wage Order No. 5-2001;**
- (3) Failure to Provide Meal Periods in Violation of Lab. Code §§ 226.7, 512 & IWC Wage Order No. 5-2001;**
- (4) Failure to Provide Rest Periods in Violation of Lab. Code §§ 226.7, 1194 & IWC Wage Order No. 5-2001;**
- (5) Failure to Provide Timely, Accurate, Itemized Wage Statements in Violation of Lab. Code §§ 226, 1174 and IWC Wage Order No. 5-2001;**
- (6) Failure to Pay Earned Wages Upon Discharge, and Waiting Time Penalties in Violation of Lab. Code §§ 201-203;**
- (7) Violations of the Unfair Competition Law, Business & Professions Code §§ 17200-17209;**
- (8) Representative Action Under the Labor Code Private Attorney Generals General Act, Labor Code Section 2698, *et seq.***

DEMAND FOR JURY TRIAL

1 PLAINTIFFS JEFF WARREN, HILLARY COLE, and KATHERINE VARELA,
2 individually and on behalf of the general public, and PLAINTIFFS JOHN TRANT, DAVID
3 GUNKLE, and VICTORIA STEWART, individually (collectively “PLAINTIFFS”), bring
4 this action against their former employer DEFENDANT APPELLATIONS, LP dba ITALICS
5 WINEGROWERS (“DEFENDANT”), as well as DOES 1 through 10, inclusive, as follows:

6 **INTRODUCTION**

7 1. DEFENDANT is in the business of making and selling wine, as well as
8 operating tasting rooms in Napa County where customers taste, consume, and purchase wines.

9 2. Each PLAINTIFF was employed in one or more sales-related position, with job
10 duties that entailed spending most of their working hours executing tastings in one of
11 DEFENDANT’s on-site tasting rooms, performing sales work, and customer service duties.

12 3. DEFENDANT should have classified PLAINTIFFS as non-exempt from
13 California’s overtime and break laws. Instead, for periods during each PLAINTIFFS’
14 employment DEFENDANT misclassified PLAINTIFFS as exempt from overtime. By
15 misclassifying PLAINTIFFS, DEFENDANT failed to provide them with overtime
16 compensation, meal breaks, rest breaks, premium compensation for missed meal and rest
17 breaks, accurate itemized wage statements, and timely payment of wages consistent with the
18 requirements of California wage and hour laws.

19 4. PLAINTIFFS GUNKLE, STEWART, and VARELA began their employment
20 for DEFENDANT as hourly workers. During these periods, DEFENDANT failed to authorize
21 or permit them to take rest breaks, and DEFENDANT did not compensate them with premium
22 pay when they missed breaks during that time.

23 5. Other damages include those which arise from DEFENDANT’s failure to
24 reimburse PLAINTIFFS for all necessary costs of carrying out their sales duties, including the
25 use of their personal phone plans and home internet plans.

26 6. PLAINTIFFS seek relief for themselves pursuant to applicable state law, rules,
27 regulations, and Wage Orders of the Industrial Welfare Commission (“IWC”) including IWC
28 Wage Order No. 5-2001 to remedy the unreimbursed expenses, unpaid overtime, missed meal

1 and rest breaks and associated unpaid premiums, lack of time records, and failure to timely pay
2 wages due, as well as to obtain restitution, interest, statutory penalties, injunctive, and
3 declaratory relief.

4 7. In addition to their individual claims, PLAINTIFFS WARREN, COLE and
5 VARELA (collectively “PAGA PLAINTIFFS”) bring a representative action under the Labor
6 Code Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”) to
7 recover civil penalties on behalf of themselves and aggrieved sales employees, including but not
8 limited to individuals with the job titles Director of Hospitality, Special Events and Hospitality
9 Manager, Director of Direct to Consumer (“DTC”) Sales, Estate Host, Client Experience
10 Manager, Guest Experience Manager, and VIP Client & Operations Manager, who spent most
11 of their working hours executing tastings in any of DEFENDANT’s on-site tasting rooms and
12 performing related sales work for DEFENDANT in the State of California from July 14, 2020
13 to the present (referred to herein collectively as “aggrieved sales employees”) for
14 DEFENDANT’s violations of Labor Code sections 201-204, 210, 223, 226, 226.3, 226.7, 256,
15 510, 512, 551, 552, 558, 1174, 1174.5, 1194, 1198, 1198.5, 2751, 2802, Industrial Welfare
16 Commission Wage Order No. 5-2001. Attached hereto as **Exhibit 1** is a true and correct copy of
17 the PAGA Notice that PAGA PLAINTIFFS submitted to the LWDA on July 14, 2021.

18 **THE PARTIES**

19 8. PLAINTIFF JEFF WARREN worked for DEFENDANT from June 27, 2017
20 until January 4, 2021. He worked for DEFENDANT in Napa County, in the State of California.

21 9. PLAINTIFF HILLARY COLE worked for DEFENDANT from April 24, 2019
22 until January 4, 2021. She worked for DEFENDANT in Napa County, in the State of
23 California.

24 10. PLAINTIFF DAVID GUNKLE worked for DEFENDANT from April 23, 2018
25 to January 4, 2021. He worked for DEFENDANT in Napa County, in the State of California.

26 11. PLAINTIFF KATHERINE VARELA worked for DEFENDANT from June 5,
27 2019 to January 4, 2021. She worked for DEFENDANT in Napa County, in the State of
28 California.

1 12. PLAINTIFF JOHN TRANT worked for DEFENDANT from April 3, 2017 to
2 January 4, 2021. He worked for DEFENDANT in Napa County, in the State of California.

3 13. PLAINTIFF VICTORIA STEWART worked for DEFENDANT from July 2018
4 to November 2020. She worked for DEFENDANT in Napa County, in the State of California.

5 14. DEFENDANT APPELLATIONS, LP is a foreign limited partnership based in
6 Texas that does business as ITALICS WINEGROWERS in the State of California.
7 DEFENDANT produces and sells wine. During a period which included April 2017 to January
8 4, 2021, DEFENDANT operated tasting rooms on its winery and vineyard in Napa County, in
9 the State of California, employing a least half-a-dozen individuals in sales roles on-site. On
10 information and belief, at the time this lawsuit was filed, DEFENDANT had at least one
11 employee performing work in Napa County.

12 15. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their
13 true names and capacities are unknown to PLAINTIFFS. When their true names and capacities
14 are ascertained, PLAINTIFFS will amend this complaint by inserting their true names and
15 capacities herein. PLAINTIFFS are informed and believe and thereupon allege that each of the
16 fictitiously-named Defendants is responsible in some manner for the occurrences herein alleged,
17 and that the damages to PLAINTIFFS' and the aggrieved sales employees herein alleged were
18 proximately caused by such Defendants.

19 16. PLAINTIFFS are informed, believe, and thereon allege that each of the
20 Defendants herein was at all times relevant to this action the agent, employee, representative
21 partner, and/or joint venture of the remaining Defendants and was acting within the course and
22 scope of the relationship. PLAINTIFFS are further informed, believe, and thereon allege that
23 each of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to
24 the remaining Defendants.

25 **JURISDICTION & VENUE**

26 17. This Court has jurisdiction over all causes of action asserted herein pursuant to
27 the California Constitution, Article VI, Section 10, which grants the Superior Court original
28 jurisdiction in all cases except those given to other trial courts.

1 18. PLAINTIFFS seek damages and penalties in this case in an amount exceeding
2 the jurisdictional minimum of this Court.

3 19. Venue in Napa County is proper under California Code of Civil Procedure
4 section 395.5 because much of the unlawful conduct at issue in this case occurred in this
5 County. In addition, DEFENDANT conducted and, at the time the Complaint was filed in this
6 case, continued to conduct substantial business in Napa County and their liability arose, in part,
7 in this County.

8 **FACTUAL ALLEGATIONS**

9 20. PLAINTIFF JEFF WARREN worked for DEFENDANT from June 27, 2017
10 until February 28, 2019 as a Special Events and Hospitality Manager. In this position he
11 received a base salary plus commissions and bonuses. From March 1, 2019 until January 4,
12 2021, he worked as Director of Hospitality. In this position, he received a base salary, plus
13 bonuses.

14 21. PLAINTIFF HILLARY COLE worked for DEFENDANT as an Estate Host &
15 Client Experience Manager from roughly April 24, 2019 until January 4, 2021. In that role,
16 DEFENDANT compensated her with a base salary, plus commissions and bonuses.

17 22. PLAINTIFF DAVID GUNKLE worked for DEFENDANT as a DTC Estate
18 Host. Between roughly April 23, 2018 and February 17, 2019, PLAINTIFF GUNKLE was
19 compensated on an hourly basis, plus commissions and bonuses. Between February 18, 2019
20 and January 4, 2021, PLAINTIFF GUNKLE was compensated with a base salary, plus
21 commissions, and bonuses.

22 23. PLAINTIFF KATHERINE VARELA worked for DEFENDANT as an Estate
23 Host & Client Experience Manager. From roughly June 5, 2019 to September 15, 2019,
24 DEFENDANT compensated her on an hourly basis, plus commissions and bonuses. From
25 roughly September 16, 2019 until January 4, 2021, DEFENDANT compensated her with a base
26 salary, plus commissions and bonuses.

27 24. PLAINTIFF JOHN TRANT worked for DEFENDANT as Director of DTC
28 Sales from April 3, 2017 to February 28, 2019. In that role, he was compensated with a base
salary, plus commissions, and bonuses. From March 1, 2019 to January 4, 2021 he worked as

1 DEFENDANT's Director of Brand Development, during which time he worked off-site and
2 mostly out of state.

3 25. PLAINTIFF VICTORIA STEWART worked for DEFENDANT from July 2018
4 to sometime in February 2019 as an Administrative Assistant. During that time DEFENDANT
5 compensated her on an hourly basis. From sometime in February 2019 to November 2020, she
6 worked for DEFENDANT as a VIP Client & Operations Manager. During that time
7 DEFENDANT compensated her with a base salary, plus commissions and bonuses.

8 26. As DEFENDANT's employees, PLAINTIFFS regularly worked more than eight
9 (8) hours a day and forty (40) hours per week. Sometimes, PLAINTIFFS worked seven or more
10 days in a row.

11 27. During the periods that PLAINTIFFS worked as salaried employees,
12 DEFENDANT failed to pay PLAINTIFFS overtime compensation for hours they worked in
13 excess of eight (8) hours per day, in excess of forty (40) hours per week, and on the seventh
14 consecutive day of work in a workweek. During these periods, DEFENDANT also failed to pay
15 double-time compensation when PLAINTIFFS worked in excess of twelve (12) hours per day,
16 and in excess of eight (8) hours per day on the seventh consecutive day of work in a workweek.

17 28. DEFENDANT's failure to pay overtime to PLAINTIFFS was willful and
18 knowing.

19 29. During PLAINTIFFS' employment, DEFENDANT did not authorize or make
20 available a ten (10) minute rest period to PLAINTIFFS when they worked shifts lasting more
21 than three and a half (3.5) hours. Nor did DEFENDANT authorize or make available a second
22 ten (10) minute break during shifts lasting more than six (6) hours, or a third ten (10) minute
23 break during shifts lasting more than ten (10) hours.

24 30. During the periods that PLAINTIFFS worked as salaried employees,
25 PLAINTIFFS regularly worked in excess of five (5) hours a day without being afforded at least
26 a thirty (30) minute, uninterrupted meal period in which they were relieved of all duties.
27 PLAINTIFFS sometimes worked in excess of ten (10) hours a day without being afforded a
28 second, thirty (30) minute, uninterrupted meal period in which they were relieved of all duties.

1 31. PLAINTIFFS never signed valid meal period waivers.

2 32. DEFENDANT failed to pay a single missed-meal or missed-rest-period premium
3 to PLAINTIFFS as required under Labor Code section 226.7 and IWC Wage Order No. 5-2001
4 during the time periods when DEFENDANTS paid PLAINTIFFS on a salary basis.

5 33. As a result of DEFENDANT misclassifying PLAINTIFFS as exempt employees,
6 DEFENDANT willfully failed to provide PLAINTIFFS with paystubs that, *inter alia*, itemized
7 rates of pay, total hours worked, overtime hours, and missed breaks during the time periods
8 when DEFENDANTS paid PLAINTIFFS on a salary basis.

9 34. DEFENDANT failed to fully reimburse or indemnify PLAINTIFFS for their
10 personal phone plans and/or home internet plans.

11 35. DEFENDANT willfully and knowingly failed to pay PLAINTIFFS timely
12 during their employment and upon termination, all accrued compensation, including overtime
13 pay, missed meal and rest period compensation, and reimbursement for work-related expenses.

14 36. During periods of their employment DEFENDANT paid PLAINTIFFS a base
15 salary, plus commissions and/or bonuses. The commissions never approached half of
16 PLAINTIFFS' annual earnings.

17 37. During periods of their employment DEFENDANT misclassified PLAINTIFFS
18 as exempt from overtime. Based on their job duties and pay structure, PLAINTIFFS should
19 have received hourly pay including overtime compensation as well as meal and rest breaks.
20 DEFENDANT's misclassification of PLAINTIFFS as exempt employees was willful.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REIMBURSEMENT OF BUSINESS EXPENSES**

23 **(Labor Code §§ 2802, 558.1, and IWC Wage Order No. 5-2001)**

24 **(ON BEHALF OF ALL PLAINTIFFS AGAINST DEFENDANT)**

25 38. PLAINTIFFS incorporate by reference in this cause of action each allegation of
26 the preceding paragraphs as though fully set forth herein.

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39. While acting on the direct instruction of DEFENDANT and discharging their job duties, PLAINTIFFS incurred work-related expenses. Such expenses include reasonable reimbursements for their cell phone plans as well as payments for their home internet plans.

40. DEFENDANT failed to properly indemnify PLAINTIFFS for these expenditures. By requiring PLAINTIFFS to pay expenses they incurred in direct consequence of the discharge of their duties for DEFENDANT and in obedience of DEFENDANT's direction without properly compensating them, DEFENDANT violated Labor Code section 2802 and IWC Wage Order No. 5-2001.

41. DEFENDANT's actions were willful, in bad faith, and in knowing violation of the Labor Code.

42. By unlawfully failing to reimburse them for necessary expenditures or losses, DEFENDANT caused PLAINTIFFS to suffer losses in an amount to be determined at trial.

43. By unlawfully failing to pay PLAINTIFFS, DEFENDANT is also liable for reasonable attorneys' fees and costs under Labor Code sections 218.5 and 2802.

44. PLAINTIFFS request relief as described below.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Labor Code §§ 510, 558, 558.1, 1194, 1198, et seq.; IWC Wage Order No. 5-2001)

(ON BEHALF OF ALL PLAINTIFFS AGAINST DEFENDANT)

45. PLAINTIFFS incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

46. By failing to pay overtime compensation to PLAINTIFFS, as alleged above, DEEFNDANT violated Labor Code section 510 and IWC Wage Order No. 5-2001, which require overtime compensation for non-exempt employees. The number of overtime hours for each PLAINTIFF will be proven at trial.

47. By failing to maintain adequate time records as required by Labor Code section 1174(d) and IWC Wage Order No. 5-2001, DEFENDANT made it difficult to calculate the precise overtime due to PLAINTIFFS.

1 48. As a result of DEFENDANT's unlawful acts, PLAINTIFFS have been deprived
2 of overtime compensation in an amount to be determined at trial, and are entitled to recovery of
3 such amounts, plus interest thereon, and attorneys' fees and costs, under Labor Code section
4 1194.

5 49. PLAINTIFFS request relief as described below.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

8 **(Labor Code §§ 226.7, 512, 558.1, IWC Wage Order No. 5-2001)**

9 **(ON BEHALF OF ALL PLAINTIFFS AGAINST DEFENDANT)**

10 50. PLAINTIFFS incorporate by reference in this cause of action each allegation of
11 the preceding paragraphs as though fully set forth herein.

12 51. PLAINTIFFS regularly worked in excess of five (5) hours a day without being
13 afforded at least a thirty (30) minute uninterrupted meal period in which they were relieved of
14 all duties, as required by Labor Code sections 226.7 and 512 and IWC Wage Order No. 5-2001.

15 52. PLAINTIFFS sometimes worked in excess of ten (10) hours a day without being
16 afforded a second, thirty (30) minute, uninterrupted meal period in which they were relieved of
17 all duties, as required by Labor Code sections 226.7 and 512 and IWC Wage Order No. 5-2001.

18 53. Because DEFENDANT failed to afford proper meal periods, DEFENDANT is
19 liable to PLAINTIFFS for one (1) hour of additional pay at the regular rate of compensation for
20 each workday that the proper meal periods were not provided, pursuant to Labor Code section
21 226.7 and IWC Wage Order No. 5-2001.

22 54. DEFENDANT's failure to pay meal-period premiums was done willfully, in bad
23 faith, in knowing violation of the Labor Code and the IWC Wage Order No. 5-2001.

24 55. By violating Labor Code sections 226.7 and 512, and IWC Wage Order No. 5-
25 2001, DEFENDANTS are also liable for penalties, interest, reasonable attorneys' fees and costs
26 under Labor Code §§ 218.5, 226.7(b) and 1194.

27 56. PLAINTIFFS request relief as described below.

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Labor Code §§ 226.7, 558.1, 1194, IWC Wage Order No. 5-2001)

(ON BEHALF OF ALL PLAINTIFFS AGAINST DEFENDANT)

57. PLAINTIFFS incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

58. PLAINTIFFS regularly worked more than three-and-one-half (3.5) hours in a day without being authorized and permitted to take one (1), ten (10) minute rest period in which they were relieved of all duties; regularly worked more than six (6) hours in a day without being authorized and permitted to take two (2), ten (10) minute rest periods in which they were relieved of all duties; sometimes worked more than ten (10) hours in a day without being authorized and permitted to take three (3), ten (10) minute rest periods in which they were relieved of all duties, as required under Labor Code section 226.7 and IWC Wage Order No. 5-2001.

59. Because DEFENDANT failed to make available proper rest periods, DEFENDANT is liable to PLAINTIFFS for one (1) hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to Labor Code section 226.7(b) and IWC Wage Order No. 5-2001.

60. PLAINTIFFS were not paid for all hours worked, and DEFENDANT maintained no system for the recording rest periods.

61. DEFENDANT's failure to pay rest period premiums was done willfully, in bad faith, in knowing violation of the Labor Code and the IWC Wage Order No. 5-2001.

62. By violating Labor Code sections 226.7 and IWC Wage Order No. 5-2001, DEFENDANT is also liable for penalties, interest, reasonable attorneys' fees and costs under Labor Code sections 218.5, 226.7(b) and 1194.

63. PLAINTIFFS request relief as described below.

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FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE TIMELY, ACCURATE, ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226, 226.3, 558.1, and 1174; IWC Wage Order No. 5-2001)
(ON BEHALF OF ALL PLAINTIFFS AGAINST DEFENDANT)

64. PLAINTIFFS incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

65. Labor Code section 226(a) and IWC Wage Order No. 5-2001 require employers semi-monthly or at the time of each payment of wages to furnish each California employee with a statement itemizing, among other things, the total hours worked by the employee and their rates of pay. Labor Code section 226(b) provides that if an employer knowingly and intentionally fails to provide a statement itemizing, among other things, the total hours worked by the employee, or rates of pay, then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

66. DEFENDANT knowingly and intentionally failed to furnish PLAINTIFFS with timely, itemized statements showing the total hours worked and rates of pay, as required by Labor Code section 226(a) and IWC Wage Order No. 5-2001. As a result, DEFENDANT is liable to PLAINTIFFS for the amounts provided by Labor Code section 226(b).

67. DEFENDANT violated Labor Code section 1174 and IWC Wage Order No. 5-2001 by willfully failing to keep required payroll records showing the actual hours worked each day by PLAINTIFFS. As a direct and proximate result of DEFENDANT's failure to maintain payroll records, PLAINTIFFS suffered actual economic harm as they were precluded from accurately monitoring the number of hours worked and thus seeking all accrued overtime pay.

68. PLAINTIFFS may recover damages and penalties provided for under Labor Code section 226(e), plus interest thereon, reasonable attorneys' fees under section 226(h), and costs.

69. PLAINTIFFS request relief as described below.

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SIXTH CAUSE OF ACTION
FAILURE TO PAY EARNED WAGES UPON DISCHARGE
AND WAITING TIME PENALTIES
(Labor Code §§ 201-203, 558.1)
(ON BEHALF OF ALL PLAINTIFFS AGAINST DEFENDANT)

70. PLAINTIFFS incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

71. Labor Code sections 201 and 202 require an employer to pay its employees all wages due within the time specified by law. Labor Code section 203 provides that if an employer willfully fails to pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty (30) days of wages.

72. PLAINTIFFS have ceased performing work for DEFENDANT, and are entitled to unpaid compensation, but have not received such compensation, more than seventy-two (72) hours after the cessation of their employment.

73. DEFENDANT failed to pay the earned and unpaid wages of PLAINTIFFS within thirty (30) days from the time such wages should have been paid under Labor Code sections 201 and 202.

74. DEFENDANT willfully failed to timely compensate PLAINTIFFS for all hours worked. As a result, DEFENDANT is liable to PLAINTIFFS for waiting time penalties, together with interest thereon and reasonable attorneys' fees and costs under Labor Code section 203.

75. PLAINTIFFS request relief as described below.

SEVENTH CAUSE OF ACTION
VIOLATIONS OF THE UNFAIR COMPETITION LAW ("UCL")
(Business & Professions Code §§ 17200-17208)
(ON BEHALF OF ALL PLAINTIFFS AGAINST DEFENDANT)

76. PLAINTIFFS incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

1 77. DEFENDANT improperly, fraudulently, and unlawfully classified PLAINTIFFS
2 as exempt employees and thereby committed unlawful, unfair and/or fraudulent business acts
3 and practices as defined by Business & Professions Code section 17200, by engaging in the
4 following:

5 (a) Failing to reimburse PLAINTIFFS for all employment-related business
6 expenses and losses (see Lab. Code § 2802; IWC Wage Ord. No. 5-2001);

7 (b) Failing to pay overtime compensation to PLAINTIFFS (see Lab. Code §§ 510,
8 558, 1194, 1198, *et seq.*; IWC Wage Ord. No. 5-2001);

9 (c) Requiring PLAINTIFFS to work for periods of five or more consecutive hours
10 without having at least one half-hour, off-duty break for a meal (see Lab. Code
11 §§ 226.7, 512; IWC Wage Order No. 5-2001);

12 (d) Requiring PLAINTIFFS to work for periods of three and a half or more
13 consecutive hours without authorizing or permitting at least one half-hour, off-
14 duty rest break (see Lab. Code §§ 226.7, 1194; IWC Wage Order No. 5-2001);

15 (e) Failing to pay PLAINTIFFS premium wages earned while working without the
16 legally mandated meal and rest breaks and failing to separately compensate
17 PLAINTIFFS for rest breaks;

18 (f) Failing to provide accurate itemized wage statements to PLAINTIFFS (Lab.
19 Code §§ 226, 1174; IWC Wage Order No. 5-2001);

20 (g) Failing to maintain accurate payroll records showing the actual hours worked
21 each day by PLAINTIFFS (Lab. Code § 1174).

22 78. PLAINTIFFS lost money and property as a result of DEFENDANT's unlawful
23 business practices described above.

24 79. Pursuant to the UCL, PLAINTIFFS are entitled to restitution of money or
25 property acquired by DEFENDANT by means of such unlawful business practices, in amounts
26 not yet known, but to be ascertained at trial.

27 80. Pursuant to the UCL, PLAINTIFFS are entitled to injunctive relief against
28 DEFENDANT's ongoing unlawful business practices. If an injunction does not issue enjoining

1 DEFENDANT from engaging in the unlawful business practices described above,
2 PLAINTIFFS and the general public will be irreparably injured.

3 81. PLAINTIFFS have no plain, speedy, and adequate remedy at law.
4 DEFENDANT, if not enjoined by this Court, will continue to engage in the unlawful business
5 practices described above in violation of the UCL, in derogation of the rights of its
6 PLAINTIFFS and the general public.

7 82. PLAINTIFFS' success in this action will result in the enforcement of important
8 rights affecting the public interest by conferring a significant benefit upon the general public.

9 83. DEFENDANT's numerous violations of local and California law, as well as the
10 other statutory and regulatory violations alleged herein, constitute unlawful business actions and
11 practices in violation of Business and Professions Code section 17200, *et seq.*

12 84. Pursuant to Business and Professions Code section 17200, *et seq.*, PLAINTIFFS
13 are entitled to restitution of all fees, wages, and compensation alleged herein that
14 DEFENDANT collected, withheld, and retained during the period commencing four (4) years
15 preceding the filing of this action and a declaration that DEFENDANT's business practices are
16 unfair within the meaning of the statute, in addition to an award of attorneys' fees and costs
17 pursuant to Code of Civil Procedure section 1021.5 and other applicable law, and costs. All
18 remedies are cumulative pursuant to Business & Professions Code section 17205.

19 85. PLAINTIFFS request relief as described below.

20 **EIGHTH CAUSE OF ACTION**

21 **REPRESENTATIVE ACTION PURSUANT TO THE**
22 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
23 **(LABOR CODE § 2698, *ET SEQ.*)**

24 **(BY PLAINTIFFS WARREN, COLE & VARELA ON BEHALF OF THE LABOR**
25 **COMMISSIONER AGAINST DEFENDANT)**

26 86. PAGA PLAINTIFFS also bring a claim under Labor Codes section 2698 *et seq.*
27 in a representative capacity on behalf of DEFENDANTS' current and former aggrieved sales
28 employees who were subjected to the unlawful wage and hour practices alleged herein and
below.

1 87. The Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code
2 section 2698 *et seq.*, grants California employees the right to bring a civil action for the
3 violation of any provision of the Labor Code on behalf of themselves and other current or
4 former aggrieved employees in order to recover civil penalties. PAGA is intended to assist in
5 the achievement of maximum compliance with state labor laws by empowering aggrieved
6 employees to act as private attorneys general in order to recover civil penalties for Labor Code
7 violations that would otherwise be prosecuted by the state. (*See Arias v. Super. Ct.* (2009) 46
8 Cal. 4th 969, 980).

9 88. On January 14, 2021 pursuant to Labor Code section 2699.3, PAGA
10 PLAINTIFFS sent notice to the Labor and Workforce Development Agency (“LWDA”) via the
11 LWDA’s online filing system for PAGA letters of the specific provisions of the Labor Code
12 that they allege DEFENDANT violated, including the facts and theories to support the
13 violations, and subsequently sent copies of the notice via certified mail to DEFENDANT.
14 **(Exhibit 1)** The LWDA received PAGA PLAINTIFFS’ notice that same day.

15 89. After exhausting administrative requirements, PAGA permits an aggrieved
16 employee to collect the civil penalty authorized by law and normally collectible by the LWDA.
17 To address violations for which no penalty has been established, Section 2699(f) creates a
18 private right of action for aggrieved employees and unless otherwise specified, a default penalty
19 in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and
20 \$200 for each aggrieved employee per pay period for each subsequent violation. See Lab. Code
21 § 2699(f).

22 90. After exhausting administrative requirements, PAGA PLAINTIFFS intend to
23 amend the complaint to seek to collect appropriate civil penalties for DEFENDANT’s Labor
24 Code violations under the following Labor Code sections 201-204, 210, 223, 226, 226.3, 226.7,
25 256, 510, 512, 551, 552, 558, 1174, 1174.5, 1194, 1198, 1198.5 or 2802.

26 91. PAGA PLAINTIFFS will seek penalties, as follows.

27 92. Under Labor Code § 2699(f)(2), described above, a civil penalty of one hundred
28 dollars (\$100) for each PAGA PLAINTIFF and each aggrieved sales employee per pay period

1 for the initial violation of Labor Code § 2802, for failure to indemnify employees for business
2 expenses, and two hundred dollars (\$200) for each PAGA PLAINTIFF and each aggrieved
3 employee per pay period for each subsequent violation of Labor Code § 2802.

4 93. Under Labor Code § 558, civil penalties of fifty dollars (\$50) for each PAGA
5 PLAINTIFF and each aggrieved employee per pay period for the initial violation of Labor Code
6 § 558 where PAGA PLAINTIFFS and aggrieved employees were not paid appropriate overtime
7 premiums under Labor Code § 510 in addition to an amount sufficient to recover underpaid
8 wages; and for each subsequent violation, one hundred dollars (\$100) for each PAGA
9 PLAINTIFF and each underpaid aggrieved sales employee for each pay period for which the
10 employee was underpaid under Labor Code § 510.

11 94. Under Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
12 each PAGA PLAINTIFF and each aggrieved employee per pay period for the initial violation of
13 Labor Code § 226.7 for failing to provide meal periods, and two hundred dollars (\$200) for
14 each PAGA PLAINTIFF and each aggrieved sales employee per pay period for each
15 subsequent violation of Labor Code § 226.7 for failing to provide meal periods.

16 95. Under Labor Code § 558, DEFENDANT is subject to a civil penalty of for an
17 initial violation, fifty dollars (\$50) for each PAGA PLAINTIFF and each aggrieved employee
18 for each pay period for which the employee was not provided a meal period under Labor Code
19 § 512; and for each subsequent violation, one hundred dollars (\$100) for each PAGA
20 PLAINTIFF and each aggrieved employee for each pay period for which the employee was
21 underpaid under Labor Code § 512.

22 96. Under Labor Code § 2699(f)(2), DEFENDANT is subject to a civil penalty of
23 one hundred dollars (\$100) for each PAGA PLAINTIFF and each aggrieved sales employee per
24 pay period for the initial violation of Labor Code § 226.7 for failing to provide rest period, and
25 two hundred dollars (\$200) for each PAGA PLAINTIFF and each aggrieved employee per pay
26 period for each subsequent violation of Labor Code § 226.7 for failing to provide rest periods.

27 97. Under Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
28 each PAGA PLAINTIFF and each aggrieved sales employee per pay period for the initial

1 violation of Labor Code §§ 201, 202, and 203 for their failure to pay earned wages upon
2 discharge, and two hundred dollars (\$200) for each PAGA PLAINTIFF and each aggrieved
3 sales employee per pay period for each subsequent violation of Labor Code §§ 201 and 202.

4 98. Under Labor Code § 2699(f)(2), a civil penalty of one hundred dollars (\$100) for
5 each PAGA PLAINTIFF and each aggrieved sales employee per pay period for the initial
6 violation of Labor Code §§ 204 for their failure to pay earned wages timely, and two hundred
7 dollars (\$200) for each PAGA PLAINTIFF and each aggrieved sales employee per pay period
8 for each subsequent violation of Labor Code §§ 201 and 202.

9 99. Under Labor Code § 226.3, which provides for civil penalties for violations of
10 Labor Code § 226(a), a civil penalty of two hundred fifty dollars (\$250) for each PAGA
11 PLAINTIFF and each aggrieved sales employee for the first violation, and one thousand dollars
12 (\$1,000) for each PAGA PLAINTIFF and each aggrieved sales employee for each subsequent
13 violation of Labor Code § 226(a) for failure to provide timely, accurate, itemized wage
14 statements.

15 100. Each PAGA PLAINTIFF is an “aggrieved employee” as defined by PAGA and
16 seeks to represent all other aggrieved sales employee who has performed sales work in
17 California for DEFENDANT. Each PAGA PLAINTIFF contends that each of aggrieved sales
18 employees was an employee of DEFENDANT, making DEFENDANT also liable for the
19 alleged PAGA penalties.

20 **PRAYER FOR RELIEF**

21 Based on the above allegations, PLAINTIFFS respectfully request entry of judgment
22 against DEFENDANT, as follows:

23 1. A declaratory judgment that DEFENDANT knowingly and intentionally violated
24 the following provisions of law:

- 25 a) Labor Code section 2802 and IWC Wage Order 5-2001, by failing to
- 26 indemnify PLAINTIFFS for all necessarily incurred business expenses;
- 27 b) Labor Code sections 510, 1194 *et seq.*, 1198 and IWC Wage Order 5-
- 28 2001, by failing to pay overtime compensation to PLAINTIFFS;

- 1 c) Labor Code sections 226.7 and 512, and IWC Wage Order 5-2001, by
2 failing to provide 30-minute, duty-free meal periods to PLAINTIFFS;
3 d) California Labor Code section 226.7 and IWC Wage Order 5-2001 by
4 failing to provide 10-minute, paid, duty-free rest periods to
5 PLAINTIFFS;
6 e) Business & Professions Code section 17200, *et seq.*, by failing to
7 reimburse PLAINTIFFS for all necessary business expenses incurred, by
8 failing to pay PLAINTIFFS overtime compensation, by failing to provide
9 off-duty meal and rest periods and/or pay meal and rest period
10 compensation to PLAINTIFFS, by failing to provide PLAINTIFFS with
11 itemized wage statements showing all hours worked, by failing to
12 maintain payroll records that document all hours worked by
13 PLAINTIFFS, and by willfully failing to pay all compensation owed to
14 PLAINTIFFS timely including upon termination of employment;

15 2. A declaratory judgment that DEFENDANT's violations as described above were
16 willful or knowing and intentional;

17 3. An award to PLAINTIFFS of statutory penalties because of DEFENDANT's
18 failure to provide PLAINTIFFS with itemized wage statements that comply with the requirements
19 of Labor Code section 226, subject to proof at trial;

20 4. An award to PLAINTIFFS of statutory penalties because of DEFENDANT's
21 failure to timely pay PLAINTIFFS all wages due, including upon their final paycheck pursuant to
22 Labor Code sections 201-203, subject to proof at trial;

23 5. An award to PLAINTIFFS of damages in the amount of unpaid necessary business
24 expenses, overtime compensation, and meal and rest period compensation, including interest
25 thereon subject to proof at trial;

26 6. An order requiring DEFENDANT to pay restitution of all amounts owed to
27 PLAINTIFFS for DEFENDANT's failure to reimburse for business expenses, failure to pay legally
28

1 required overtime pay, meal and rest period pay, and interest thereon, in an amount according to
2 proof, pursuant to Business & Professions Code section 17203;

3 7. Award of civil penalties pursuant to the PAGA as described above;

4 8. An award to PLAINTIFFS of reasonable attorneys' fees and costs, pursuant to
5 California Code of Civil Procedure section 1021.5 and Labor Code sections 218.5, 226, 1194, and
6 2802, and/or other applicable law;

7 9. For interest on all sums at the maximum legal rate; and

8 10. An award to PLAINTIFFS of such other and further relief, in law or equity, as this
9 Court deems just and proper.

10 **DEMAND FOR JURY TRIAL**

11 PLAINTIFFS demand a jury trial on all issues.

12
13 Dated: September 17, 2021

Respectfully submitted,

14 TERP LAW

15
16
17 By: 

RACHEL TERP

18 *Plaintiffs Jeff Warren, Hillary Cole, and Katherine*
19 *Varela, individually, and on behalf of the general*
20 *public, and Plaintiffs John Trant, David Gunkle, and*
21 *Victoria Stewart, individually.*

DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demand a jury trial on all issues.

DATED: September 17, 2021

TERP LAW



By: _____
RACHEL TERP

Plaintiffs Jeff Warren, Hillary Cole, and Katherine Varela, individually, and on behalf of the general public, and Plaintiffs John Trant, David Gunkle, and Victoria Stewart, individually.

Terp Law

2831 Telegraph Avenue, Oakland, California 94609 • rachel@terplaw.com • p 510.550.5103 • f 510.405.8755

VIA ELECTRONIC UPLOAD AND CERTIFIED MAIL

July 14, 2020

California Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000, MIC-55
Sacramento, CA 95814
(916) 653-9900

Re: WARREN v. APPELLATIONS, LP dba ITALICS WINEGROWERS

Dear Sir or Madam:

I represent JEFF WARREN, KATHERINE VARELA, and HILLARY COLE (referred to herein as “Plaintiffs”) who have individual legal claims under California law, including for unreimbursed expenses, unpaid overtime compensation, denied meal and rest breaks, failure to provide timely, accurate, itemized wage statements, waiting time penalties, failure to pay restitution, statutory penalties, civil penalties, interest, attorneys fees, and costs against APPELLATIONS, LP dba ITALICS WINEGROWERS (referred to herein as “Defendant”) based on their prior employment relationship with that company. Defendant is a tasting room, winery, and vineyard business that operates in Napa County, California. Plaintiffs and other individuals working in California were employed by Defendant with titles including but not limited to Director of Hospitality, Special Events and Hospitality Manager, Director of Direct to Consumer (“DTC”) Sales, Estate Host, Client Experience Manager, Guest Experience Manager, and VIP Client & Operations Manager (referred to herein as “aggrieved sales employees”). Regardless of their job titles, Plaintiffs and aggrieved sales employees spent the majority of their time executing wine tastings on Defendant’s premises and selling wine to potential and current customers of Defendants.

Plaintiffs’ legal claims under the California Labor Code against Defendant on behalf of themselves and other aggrieved sales employees, include:

- Un-reimburse business expenses, including cell phone plans and home internet plans;
- Failure to pay overtime;
- Failure to provide a day of rest, requiring Plaintiffs to work seven or more days in a row;
- Failure to provide and authorize meal and rest breaks;
- Failure to pay missed meal and rest break premiums;
- Failure to provide accurate, itemized wage statements; and
- Failure to timely pay all wages due, during and upon termination of employment.

I am writing this letter to the LWDA pursuant to the exhaustion requirements of Labor Code sections 2699 and 2699.3 because my clients intend to file a lawsuit very soon and intend to add claims on behalf of themselves and other aggrieved sales employees under the Private Attorney

General Act (“PAGA”). The purpose of my letter is to find out whether the LWDA intends to investigate my clients’ allegations of violations related to Labor Code sections 201-204, 210, 223, 226, 226.3, 226.7, 256, 510, 512, 551, 552, 558, 1174, 1174.5, 1194, 1198, 1198.5, 2802, Industrial Welfare Commission Wage Order No. 5-2001 or other applicable wage orders, and Code of Civil Procedure section 1021.5. The following is a brief summary of my clients’ allegations against Defendant.

I. Defendant Misclassified Plaintiffs and Aggrieved Sales Employees as Exempt.

A. Facts:

During Plaintiffs’ employment, Defendant compensated Plaintiffs and other aggrieved sales employees with a base salary paid out in fixed amounts plus commissions and/or bonuses. The commissions rarely approached or exceeded half of the aggrieved sales employee’s earnings, whether measured by workweek or pay period. Commissions never exceeded half of any aggrieved sales employee’s earnings in a year. Plaintiffs and other aggrieved sales employees’ spent the majority of their time preparing for, executing, and cleaning up after wine tastings, and performing wine sales duties. On information and belief, roughly six employees have served in sales positions based out of the Italics Winegrowers tasting rooms in Napa County over the last four years, and about five of those individuals have performed those job duties in the last year.

B. Law:

The default rule under federal and California law is that employers must pay their employees on an hourly basis. California exempts several categories of job positions from the default overtime rule, including outside sales employees, executive employees, administrative employees, and where certain wage orders apply, commissioned sales employees. Exempt employees are not entitled to hourly pay and may receive a fixed salary. Plaintiffs and other aggrieved sales employees were non-exempt employees under state law and should have been compensated accordingly. At least one aggrieved employee complained to management about the fact that tasting room workers were performing non-exempt hourly work but misclassified as exempt and receiving salary compensation, to no avail.

California’s commissioned pay exemption does not apply. The commissioned pay exemption is only available to employees covered by Industrial Welfare Commission Wage Order Nos. 4 and 7 whose earnings exceed one and one-half (1 1/2) times the minimum wage if more than half of that employee’s compensation represents commissions.” Industrial Welfare Commission, Wage Order No. 4, subd. 3(D) (emphasis added); *Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 667 (2014).

First, the Industrial Welfare Commission Wage Order No. 5 is the applicable order for salespersons who work in a tasting room.¹ That wage order covers the Public Housekeeping Industry, and includes:

¹In the alternative, Plaintiffs allege that Industrial Welfare Commission Wage Order Nos. 4, 8, and 13, apply.

any industry, business, or establishment, which provides meals . . . and includes, but is not limited to . . . [r]estaurants, nightclubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises.

Defendant operated tasting rooms where liquid wine and solid-food pairings were provided to visiting customers; therefore, Plaintiffs' wage claims are covered by Wage Order No. 5.

Second, even if Industrial Welfare Commission Wage Order No. 4 or 7 were applied, Plaintiffs and other aggrieved sales employees would not be exempt. "Whether the minimum earnings prong is satisfied depends on the amount of wages *actually paid* in a pay period. An employer may not attribute wages paid in one pay period to a prior pay period to cure a shortfall." *Peabody v. Time Warner Cable, Inc.*, 59 Cal.4th 662, 669 (2014). A review of aggrieved sales employees' compensation will demonstrate that commissions rarely constituted more than half of any Plaintiff's pay in a single week or pay period, and that they never received fifty percent (50%) or more of their annual compensation in commissions. As salespeople earning less than half of their compensation in commissions, California's commissioned sales exemption is inapplicable, and Plaintiffs and the aggrieved sales employees were entitled to overtime pay.

California's outside sales exemption applies to employees who "customarily and regularly work more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities." Industrial Welfare Commission, Wage Order No. 5, subd. 2(M) (emphasis added). Employees engaged in outside sales historically have been exempt from overtime because "it's very difficult to control their hours They set their own time, and they're on the road, they call on their customers [R]arely do you know what they are doing on an hour-by-hour basis." DLSE Op. Ltr.1998.09.08 (quoting Trans. of IWC meeting 2/23/96, p. 148).

In the last year, Plaintiffs' sales duties were meant to be performed primarily in-house, and not away from the employer's place of business. Therefore, they were not engaged in outside sales or exempt on that basis.

California's white-collar exemptions do not apply. In order to prevail on a white-collar exemption defense, such as the administrative or executive exemption, Defendant has the burden to establish that Plaintiffs and other aggrieved sales employees were primarily engaged in exempt activities. California has adopted "a purely quantitative approach" to the primary duties inquiry. *See Ramirez v. Yosemite Water Co.*, 20 Cal.4th 785, 797 (1999) (discussing application of the outside salesperson exemption, which applies when "more than half" of an employee's working time is spent on outside sales); *Heyen v. Safeway Inc.* 216 Cal.App.4th 795, 825-829 (2013) (applying quantitative approach to executive exemption); *Greko v. Diesel U.S.A., Inc.*, 277 F.R.D. 419, 423-424 (N.D. Cal. 2011) (same); *see also Bell v. Farmers Ins. Exchange*, 87 Cal.App.4th 805, 818 n13 (2001) (discussing quantitative approach to administrative exemption). Because Plaintiffs spent the majority of their work time performing onsite tastings and related

sales duties – which are normally non-exempt duties – Defendant should have paid them on an hourly basis.

II. Defendant failed to Pay Plaintiffs and Aggrieved Sales Employees Overtime.

A. Facts:

Defendant misclassified and failed to pay Plaintiffs and other aggrieved sales employees overtime. During their employment, Plaintiffs regularly worked more than eight (8) hours a day and forty (40) hours a week, and often seven (7) or more days in a row. Management was aware that Plaintiffs and other aggrieved sales employees worked overtime.

B. Law:

In California, employees who work overtime hours are entitled to one-and-a-half (1.5) times their normal hourly pay, or “time-and-a-half”, for each hour worked over eight (8) hours per day, over forty (40) hours per week, and/or during the first eight (8) hours of work on the seventh consecutive day of work in a workweek. Lab. Code § 510, subd. (a). Further, employees are entitled to two (2) times their normal hourly pay, or “double-time”, for each hour worked over twelve (12) hours in a day, or after the first eight (8) hours of work on the seventh consecutive day of work in a workweek. Plaintiffs and aggrieved sales employees regularly worked more than five (5) overtime hours per week entitling them to time-and-a-half and sometimes double-time pay, which they did not receive because Defendant misclassified them and as exempt.

III. Defendant Failed to Provide, Authorize, or Make Available Duty-Free Meal and Rest Breaks to Plaintiffs and Aggrieved Sales Employees.

A. Facts:

Because Defendant misclassified tasting room sales staff, the company failed to provide Plaintiffs with meal and rest breaks or pay them premiums for missed breaks.

Defendant had no policy to authorize or permit Plaintiffs and aggrieved sales employees to take ten (10) minute duty-free rest breaks. Given the press of work and pressure to make commissioned sales, Plaintiffs and other aggrieved sales employees were unable to take a ten (10) minute rest break for shifts lasting between three and one-half (3 ½) to six (6) hours, or a second meal break for shifts lasting more than six (6) hours to ten (10) hours, or a third break for shifts lasting more than ten (10) hours to fourteen (14) hours, and so on.

Defendant had no policy for providing Plaintiffs and aggrieved sales employees with meal breaks for every five (5) hours worked. Plaintiffs and aggrieved sales employees often did not eat lunch or ate lunch on the run or in front of their laptops while they did work, without receiving half-hour, uninterrupted breaks. Plaintiffs and aggrieved sales employees did not sign meal waivers.

B. Law Regarding Meal Breaks:

Employees who work more than five (5) hours per day are entitled to a meal period of at least thirty (30) minutes; and a second meal period if they work more than ten (10) hours in a day. Labor Code § 512 subd. (a); see *Brinker Restaurant Corp. v. Sup.Ct.*, 53 Cal.4th 1004, 1041-1042 (2012). The employer may schedule an employee's first meal period to begin "no later than the end of the fifth hour of work" and second meal period to begin "no later than the end of the tenth hour of work. *Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 61 (2021).

Employers need not "ensure" that no work is performed during a meal period. So long as the employer relieves the employee of all duties, the employer is not liable for a meal period premium if the employee chooses to work, *unless* the employer deters or discourages the employee from taking the meal period. If the employer knew or reasonably should have known the employee was working during the meal period, the employer will be liable for payment of the employee's regular wage for that time worked. (*Brinker*, 53 Cal.4th at 1034-1041)

Defendant had no policy or practice of providing Plaintiffs and aggrieved sales employees with a thirty (30) minute meal break while Defendants classified them as exempt. As a result, Plaintiffs and aggrieved sales employees regularly ate their lunch while working, if at all.

An employer who fails to provide a required meal period must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday a meal period was not provided. Labor Code § 226.7 subd. (c); see Industrial Welfare Commission, Wage Order No. 5, subd. 11(B). Defendant has failed to pay Plaintiffs and aggrieved sales employees premiums for their missed meal breaks.

C. Law Regarding Rest Breaks:

Employers must provide non-exempt employees rest and recovery periods that "shall be counted as hours worked" and "for which there shall be no deduction from wages." Lab. Code § 226.7 subd. (d). In general, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker*, 53 Cal. 4th at 1029. As with a meal period, during a rest period, the employer must relieve their employees of all duties and relinquish control over how the employee spends their time. *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260 (2016). Defendant had no policy or practice of authorizing or permitting rest breaks for Plaintiffs and aggrieved sales employees and will be liable for their missed rest breaks.

An employer who fails to provide compliant rest periods must pay the employee an additional hour of pay at the employee's regular rate for each day a rest period was not provided. Lab. Code § 226.7 subd. (c). Defendant failed to pay Plaintiffs and aggrieved sales employees premiums for missed rest breaks.

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IV. Defendant Failed to Reimburse Plaintiffs for the home Internet Plans that they were Required to Use in Performing their Job Duties.

A. Facts:

Authentic Vacations failed to reimburse Plaintiffs and aggrieved sales employees for necessary business expenses, including home internet plans when they worked at home. Also, until March 2020, Defendants failed to pay some of the Plaintiffs any reasonable amount for the use of their personal cell phone plans.

B. Law:

California employers must indemnify employees “for all necessary expenditures or losses incurred . . . in direct consequence of the discharge of his . . . duties.” Lab. Code § 2802 subd. (a). The purpose of Section 2802 is “to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.* 42 Cal.4th 554, 562 (2007) (internal quotes omitted); *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). This obligation extends to cell phone plans, as well as home internet when employees are required to use their personal plans to work from home. *See, e.g., id.* Plaintiffs have reimbursement claims against Defendant.

V. Defendant Failed to Provide Accurate Itemized Wage Statements and Timely Final Pay.

A. Facts:

Because Defendant misclassified Plaintiffs and aggrieved sales employees, the company failed to provide these employees with accurate, itemized wage statements showing their rates of pay, hours worked, and the gross pay they should have received if they were paid overtime and meal and rest break premiums.

Plaintiff Stewart left Defendant’s employ in or around October 2020 but was not paid all back wages and reimbursements due at that time. Defendants terminated the remaining Plaintiffs and at least one other aggrieved sales employee on January 4, 2021. Defendant delayed in getting these Plaintiffs and other aggrieved sales employee their final paycheck, and their final paycheck did not include back wages or complete reimbursements.

B. Law Regarding Itemized Wage Statements:

Employers’ wage statements must include gross wages earned, total hours worked, and pay rates, among other things. Lab. Code § 226. Because Plaintiffs and aggrieved sales employees were misclassified and denied overtime pay and missed break premiums, their bi-weekly paystubs lack the requisite information to avoid liability under Labor Code sections 226.

// //

C. Law Regarding Untimely Payment of Wages:

Where Defendant fails to pay all wages at least twice during each calendar month on days designated in advance by the employer as the regular paydays, Defendant faces liability under Labor Code section 204. Defendant did not pay all wages due in Plaintiffs and aggrieved sales employees' regular paychecks because they were misclassified and denied overtime as well as meal and rest breaks without receiving premiums.

Where an employer terminates an employee, payment of final wages is due immediately. Lab. Code § 201. Where an employee gives adequate notice that they are leaving a job, the employer must pay all wages due on their last day. Lab. Code § 202. Where an employer willfully violates this provision, Labor Code section 203 provides waiting time penalties up to thirty (30) days, of one day's pay per day. *Id.* Plaintiff Stewart gave adequate notice that she was quitting her job in 2020, but Defendants did not pay her all back wages and reimbursements due in her final paycheck. Defendant terminated the other Plaintiffs on January 4, 2021 but did not pay them until January 8, 2021. Nor did their final paychecks or other aggrieved sales employees' paychecks include, *inter alia*, unreimbursed expenses, unpaid overtime, missed meal and rest breaks, or itemized wage statement penalties.

VI. The LWDA Should Issue Penalties Against Authentic Vacation for the Wage Violations Discussed Above.

Based on the forgoing, Plaintiffs allege the following willful violations of California law by Defendant, that form the basis of her PAGA penalties claims:

1. Defendant failed to indemnify Plaintiffs and aggrieved sales employees for all necessary expenditures incurred. Defendant did not, e.g., reimburse Plaintiffs and other aggrieved sales employees for the use of their home internet plans for job related purposes, in violation of Labor Code sections 558, 2802, 2698, *et seq.*
2. Defendant's policies and procedures required Plaintiffs and aggrieved sales employees to work in excess of eight (8) hours per workday, in excess of forty (40) hours per week, and sometimes seven (7) days in a workweek, and Defendant unlawfully failed to pay Plaintiffs and aggrieved sales employees the proper overtime compensation, in violation of IWC Wage Order No. 5-2001 and Labor Code sections 510, 558, 1194, 1198, 2689 *et seq.*;
3. Defendant failed to provide Plaintiffs and aggrieved sales employees with lawful meal or rest periods, or to pay meal and rest break premiums, in violation of IWC Wage Order No. 5-2001 and Labor Code section 226.7, 512, 558, and 2698, *et seq.*;
4. Defendant failed to provide to Plaintiffs and aggrieved sales employees timely, accurate, itemized wage statements including, *inter alia*, of rates of pay and hours worked, in violation of Labor Code sections 226, 226.3, and 2698 *et seq.*;
5. Defendant failed to keep payroll records showing total hours worked and wages paid to employees, in violation of Labor Code sections 1174(d), 1174.5, and 2698 *et seq.*;
6. Defendant failed to provide prompt payment of wages to Plaintiffs and aggrieved sales employees upon termination and resignation in violation of Labor Code sections 201, 202, 203, 204, 256, and 2698 *et seq.*

VII. Conclusion

Thank you for your assistance and cooperation in this matter. Please contact the undersigned if you have any questions. We look forward to your response at your earliest convenience.

Regards,



Rachel M. Terp, Esq.

CC'd by certified mail to:

STEVE REYNOLDS, Agent for Service of Process for APPELLATIONS, LP
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APPELLATIONS, LP dba ITALICS WINEGROWERS
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